



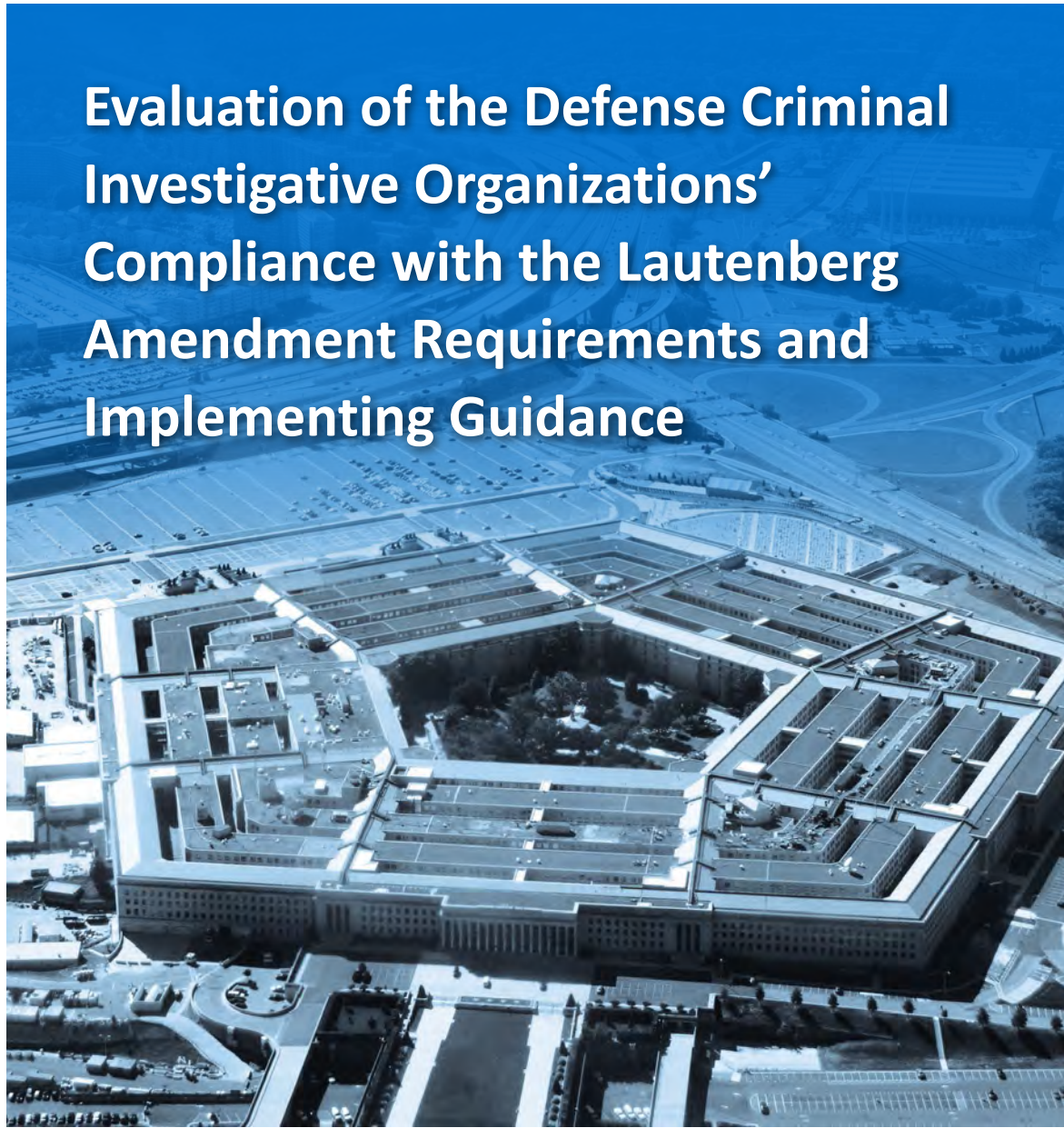
INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 6, 2015



Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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Results in Brief

Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance

February 6, 2015

Objective

We evaluated the Defense Criminal Investigative Organizations' (DCIOs') compliance with the requirements in the Lautenberg Amendment as implemented by DoD Directive (DoDD) 5210.56, "Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities," and DoD Instruction (DoDI) 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel." Specifically, we determined whether the DCIOs have adequate procedures and processes to ensure:

- a qualifying domestic violence conviction (state or Federal convictions for misdemeanor crimes of domestic violence, felony crimes of domestic violence (adjudged on or after November 27, 2001), or general or special court-martial convictions for Uniform Code of Military Justice offenses otherwise meeting the elements of a crime of domestic violence) can be identified prior to entrance on duty;
- domestic violence convictions are reported for all their personnel during their employment with the DCIO;
- personnel actions are taken if a qualifying domestic violence conviction is discovered or occurs after an employee enters on duty; and
- qualifying domestic violence convictions are documented.

Findings

The DCIOs did not comply with the Lautenberg Amendment as implemented by cited DoD policies in the following areas.

- U.S. Army Criminal Investigation Command (USACIDC) did not require personnel applying for covered positions to use the DD Form 2760 to certify that they did not have qualifying convictions, in accordance with DoDD 5210.56 and DoDI 6400.06.
- Defense Criminal Investigative Service (DCIS), USACIDC, and Naval Criminal Investigative Service (NCIS) did not have clear and consistent policies regarding the disposition of privately owned firearms and ammunition by agents found to have a qualifying conviction.
- DCIS, USACIDC, and NCIS did not periodically inform employees in covered positions that they have an affirmative, continuing obligation to inform their commander or supervisor if they have an existing qualifying conviction or later obtain one.
- DoDI 6400.06 paragraph 6.1.5 requires a memorandum of understanding (MOU) between DoD and civilian law enforcement agencies for the purposes of sharing information about domestic violence incidents involving DoD employees. USACIDC, NCIS, and AFOSI have not established MOUs in accordance with DoDI 6400.06, but the requirement is redundant because DoDI 6400.06 also requires an MOU between base legal officials and civilian prosecuting attorneys.

Despite the findings identified, we determined that it is unlikely the DCIOs hired or retained anyone with a qualifying conviction because the suitability investigation process is very thorough.



Results in Brief

Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance

Recommendations

The Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy (ODASD/MC&FP) and the Military Criminal Investigative Organizations (MCIOs) should revise their policies to comply with the Lautenberg Amendment. Specifically, their policies must be clear and consistent regarding the disposition of privately owned firearms and ammunition by agents found to have a qualifying conviction. Additionally, the MCIOs should require all employees serving in covered positions to complete the DD Form 2760 annually. Also, ODASD/MC&FP should revise DoDI 6400.06 by removing the requirement for a separate MOU between civilian law enforcement agencies and the MCIOs.

Management Comments and Our Response

The Deputy Assistant Secretary of Defense for Military Community and Family Policy agreed with our findings and recommendation to revise DoDI 6400.06. In addition, the MCIOs agreed with our findings and recommendations to revise their policies and to implement additional measures to ensure compliance with the Lautenberg Amendment and DoD policies. No further comments are required. Please see the Recommendations Table on the following page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy)		B.1, C.1, and D
Deputy Inspector General for Investigations, DoD Office of the Inspector General		B.2, C.2
Commander, U.S. Army Criminal Investigation Command		A, B.2, C.2,
Director, Naval Criminal Investigative Service		B.2, C.2



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

February 6, 2015

MEMORANDUM FOR OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE
(MILITARY COMMUNITY AND FAMILY POLICY)
DEPUTY INSPECTOR GENERAL FOR INVESTIGATIONS, DEFENSE
CRIMINAL INVESTIGATIVE SERVICE
COMMANDER, U.S. ARMY CRIMINAL INVESTIGATION COMMAND
DIRECTOR, NAVAL CRIMINAL INVESTIGATIVE SERVICE
COMMANDER, U.S. AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS

SUBJECT: Evaluation of the Defense Criminal Investigative Organizations' Compliance with the
Lautenberg Amendment Requirements and Implementing Guidance
DODIG-2015-078 (Project No. 2013C030)

We evaluated the Defense Criminal Investigative Organizations' (DCIO) compliance with the requirements of the Lautenberg Amendment as implemented by DoD Directive 5210.56, "Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities," and DoD Instruction 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel." We conducted this evaluation in accordance with the Council of Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Inspection and Evaluation.

We determined the DCIOs did not have clear and consistent policies regarding the disposition of privately owned firearms and ammunition by agents found to have a qualifying conviction. We also found that not all of the Military Criminal Investigative Organizations periodically inform employees in covered positions that they have an affirmative, continuing obligation to inform their commander or supervisor if they have an existing qualifying conviction or later obtain one. Finally, we found that U.S. Army Criminal Investigation Command did not require personnel applying for covered positions to use the DD Form 2760 to certify that they did not have qualifying convictions, but used a memorandum.

We considered management comments on a draft of this report when preparing the final report. Management agreed with our recommendations; therefore, no additional comments are required.

We appreciate the courtesies extended to our staff. Please direct any questions to Supervisory Special Agent Shawn Simonton at (703) 604-8768. If you desire, we will provide a formal briefing on the results.

A handwritten signature in black ink, appearing to read "R. Stone", is located below the text of the memorandum.

Randolph R. Stone
Deputy Inspector General
Policy and Oversight

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Introduction

Objective

Our objective was to evaluate the Defense Criminal Investigative Organizations' (DCIOs')¹ compliance with the requirements in the Lautenberg Amendment as implemented by DoD Directive (DoDD) 5210.56, "Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities," April 1, 2011, and DoD Instruction (DoDI) 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," August 21, 2007, Incorporating Change 1, September 20, 2011. Specifically, we focused on whether the DCIOs had adequate procedures and processes to ensure:

- a qualifying domestic violence conviction (briefly discussed in the DoD Policy section of this report) can be identified prior to entrance on duty;
- domestic violence convictions are reported for all personnel during their employment with DCIO;
- personnel actions are taken if a qualifying domestic violence conviction is discovered or occurs after an employee enters on duty; and
- qualifying domestic violence convictions are documented.

Background

Federal Law

The Gun Control Act of 1968 (18 U.S.C. 921, et seq.) was enacted following the assassinations of President John F. Kennedy, Robert Kennedy, and Martin Luther King, Jr. The Gun Control Act amended the National Firearms Act of 1934. It also applies to the firearms industry and the individual firearms owners. The law made it illegal for someone with a qualifying conviction to own, possess, or transport weapons or ammunition. The Domestic Violence Amendment to the Gun Control Act (Lautenberg Amendment), Public Law 104-208, was passed in 1996. The Amendment was named for its sponsor, Senator Frank Lautenberg and sought to close perceived gaps in the original law. Specifically, his proposal addressed misdemeanor domestic violence convictions and restraining orders for domestic abuse by including them in the definition of qualifying convictions. Once signed into law, the Lautenberg Amendment made it illegal to knowingly sell or provide a firearm to a person known to have a qualifying conviction. In addition, it changed

¹ The DCIOs are the U.S. Army Criminal Investigations Command (USACIDC), the Naval Criminal Investigative Service (NCIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS). Excluding DCIS, these organizations are the Military Criminal Investigative Organizations (MCIOs).

the language of the Gun Control Act to ensure the law applies to military personnel and law enforcement officers who rely on firearms and ammunition to perform their job.

DoD Policy

DoDD 5210.56 authorizes the carrying of firearms by certain DoD personnel, including law enforcement personnel, under specific conditions and implements policy for complying with the Gun Control Act of 1968 and the Lautenberg Amendment. It mandates a screening process for all personnel carrying firearms. It also requires completion of annual firearms training and completion of a DD Form 2760, “Qualification to Possess Firearms or Ammunition,” for those personnel.

DoDI 6400.06 contains procedures for implementing the Lautenberg Amendment and states that DoD personnel serving in positions in which they handle firearms or ammunition (known as “covered positions” for DoD civilian personnel) have a continuing obligation to inform their commanders or supervisors if they have, or later obtain, a “qualifying conviction.” The Instruction defines qualifying convictions as “State or Federal convictions for misdemeanor crimes of domestic violence,” felony crimes of domestic violence (adjudged on or after November 27, 2001), or general or special court-martial convictions for Uniform Code of Military Justice offenses otherwise meeting the elements of a crime of domestic violence. DoD does not apply the provisions of the Lautenberg Amendment to major weapons systems such as tanks, crew-served weapons,² aircraft, etc. DoDI 6400.06 mandates the use of the DD Form 2760 if a Component requires employees (military or civilian) to certify they do not have a qualifying conviction.

DoDI 6400.06 requires Components to periodically inform employees (military and civilian) of the Lautenberg Amendment and its consequences. It also requires Components to issue regulations governing how and where completed DD Forms 2760 are to be filed for retrieval. In addition, Components must issue policies to ensure compliance with the Lautenberg Amendment with respect to privately owned firearms under Government control or permitted in Government quarters.³

² A crew-served weapon requires more than one individual to function due to its complexity, such as requiring one person to load while another fires.

³ Privately owned firearms under Government control would apply to installations where firearms were not authorized to be stored in Government quarters. These installations usually require firearms to be stored at the Military Police or Security Forces Armory.

DoDI 6400.06 further requires commanders to ensure that military criminal investigative and law enforcement organizations and legal officials establish (or revise existing) memorandums of understanding (MOUs) with their counterparts in the local community to include procedures for improving information sharing on domestic abuse investigations, arrests, and prosecutions involving military personnel.

DoD mandates use of the DD Form 2760 by all DoD personnel who are required to certify if they do or do not have a qualifying domestic violence conviction. Specifically, the form is used to determine if a person has been convicted of a crime of domestic violence that would disqualify them from shipping, transporting, possessing, or receiving firearms or ammunition. DoD also uses it to determine if reassignment, reclassification, or administrative action is necessary.

Finding A

Employee Certification

USACIDC did not require personnel applying for covered positions to use the DD Form 2760 to certify that they do not have qualifying convictions, in accordance with DoDD 5210.56 and DoDI 6400.06.

Discussion

The USACIDC Special Agent Accreditation Division did not require military applicants for positions as special agents to complete a DD Form 2760 certifying that they do not have a qualifying conviction. In addition, the Human Resources Division did not use the DD Form 2760 but instead required civilian applicants to sign a conditions of employment agreement during their entry on duty appointment, certifying that they are in compliance with the Lautenberg Amendment. Both divisions were unaware that an employee (military or civilian) who did not have a qualifying conviction was required to fill out a DD Form 2760. DoDD 5210.56 requires anyone carrying a firearm to complete a DD Form 2760. Although not as directive as DoDD 5210.56, DoDI 6400.06 states individuals “may” be required to certify on a DD Form 2760 that they do not have a qualifying conviction prior to selection for a covered position. DoDI 6400.06 also states that if certification is required, the DD Form 2760 must be used. However, Army Regulation (AR) 600-20, “Army Command Policy,” September 20, 2012, implements the use of the DD Form 2760 by requiring all soldiers to complete it prior to receipt of permanent change of station orders.⁴

Soldiers with a qualifying conviction are coded⁵ in the Army personnel system to preclude assignment or retraining to covered positions. USACIDC civilian job announcements identify positions that are subject to the Lautenberg Amendment. AR 195-3, “Acceptance, Accreditation, and Release of U.S. Army Criminal Investigation Command Personnel,” April 22, 1987, and Criminal Investigation Division (CID) Regulation 195-1, “Criminal Investigation Operational Procedures,” July 1, 2014, require that applicants have no convictions in civil court for anything other than traffic offenses and have no convictions in military court when applying

⁴ The use of the DD Form 2760 while an employee is in a covered position is discussed in Finding C of this report.

⁵ AR 614-200, “Enlisted Assignment and Utilization Management,” February 26, 2009, Table 3-1, Rule 17, assigns a “Q” code to soldiers ineligible for assignment under the Lautenberg Amendment. Affected soldiers are not eligible for firearms or ammunition. Soldiers cannot be assigned to units that require the possession, handling, or use of firearms or ammunition or be reassigned overseas.

for USACIDC special agent duty. However, AR 195-3 and CID Regulation 195-1 should be revised to require that USACIDC applicants certify that they do not have a qualifying conviction using the DD Form 2760 during the application process.

Conclusion

We determined that although USACIDC did not use the DD Form 2760, it is unlikely that they hired anyone with a qualifying conviction because the suitability investigations are so thorough. The USACIDC suitability investigation includes national-level law enforcement records checks to identify criminal involvement, including domestic violence. DoDD 5210.56 requires persons carrying firearms to complete and submit a DD Form 2760. In addition, AR 600-20 requires soldiers to complete a DD Form 2760, certifying they have no qualifying convictions prior to receipt of permanent change of station orders. However, USACIDC does not require the DD Form 2760 to be completed prior to the receipt of orders. If a soldier applying for special agent duty had a qualifying conviction that was reported to base authorities, they would be disqualified based on the assignment availability code placed in the personnel system in accordance with AR 600-20. The qualifying conviction would be discovered during the application process of a soldier. Civilian applicants with a qualifying conviction are also ineligible for special agent duty.

In accordance with DoD policy, DCIS, AFOSI, and NCIS required personnel applying for covered positions to complete a DD Form 2760 to certify that they do not have a qualifying conviction.

Recommendation, Management Comments, and Our Response

Recommendation A

We recommend that Commander, U.S. Army Criminal Investigation Command revise Army Regulation 195-3 and Criminal Investigations Command Regulation 195-1 to require U.S. Army Criminal Investigation Command applicants to certify that they do not have a qualifying conviction using the DD Form 2760 during the application process. Doing so would ensure compliance with the certification requirement in DoD Directive 5210.56 and DoD Instruction 6400.06.⁶

⁶ Finding C of this report further discusses the requirement to document and report qualifying convictions throughout employment in covered positions.

U.S. Army Criminal Investigation Command Comments

The Chief of Staff, U.S. Army Criminal Investigation Command, agreed with our recommendation and stated that USACIDC has initiated policy revisions to incorporate the recommendations made in the report.

Our Response

Comments from the Chief of Staff, U.S. Army Criminal Investigation Command, are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Finding B

Disposing of Privately Owned Firearms

DCIS, USACIDC, and NCIS did not have clear and consistent policies and practices regarding the disposition of privately owned firearms and ammunition by agents found to have a qualifying conviction.⁷

⁷ The DCIOs reported no incidents that resulted in an employee (military or civilian) being required to dispose of privately owned firearms and ammunition.

Discussion

DoDI 6400.06, paragraph 6.1.4.5.1.6., states that when military members are found to have a qualifying conviction, the appropriate authority will immediately retrieve all Government-issued firearms and ammunition, suspend their authority to possess Government-issued firearms or ammunition, and advise them to dispose of their privately owned firearms and ammunitions lawfully. NCIS has active duty U.S. Marine Corps Criminal Investigations Division special agents assigned to some units; therefore, NCIS must develop procedures to comply with DoDI 6400.06.

DCIS and NCIS special agents are authorized to carry privately owned weapons, during the course of their official duties, that meet certain criteria in their agency guidance. DoDI 6400.06 does not require civilian employees to be advised to dispose of privately owned firearms and ammunition. However, to comply with the Lautenberg Amendment, a civilian special agent that has a qualifying conviction must dispose of their privately owned weapons and ammunition, even if that weapon is the one authorized by his or her agency as a duty weapon.

DCIS

DCIS lacks a formal policy regarding privately owned firearms. The DCIS Special Agent Manual (SAM) Chapter 38 directs supervisors to retrieve all Government issued firearms and ammunition once a qualifying conviction is discovered. However, DCIS does not advise the employee to dispose of privately owned firearms and ammunition lawfully or to seek legal counsel concerning the disposal of privately owned firearms and ammunition lawfully. DCIS also authorizes their special agents to arm with privately owned firearms, in place of Government-issued firearms, for duty. To comply with the Lautenberg Amendment, the civilian special agent must dispose of their privately owned weapon, even if it is authorized as a duty weapon.

USACIDC

The USACIDC Legal Division personnel were unaware of the requirement to advise military members to dispose of their privately owned firearms and ammunition lawfully if they obtained a qualifying conviction. They stated that commanders would ask a civilian employee with a qualifying conviction to release their privately owned firearms and ammunition to them for storage but believed it would be a voluntary action. USACIDC would leave any further action involving privately owned firearms to local law enforcement agencies (LEAs).

AR 600-20 states that commanders will ensure soldiers with a qualifying conviction are notified that it is unlawful to possess, ship, transport, or receive firearms and ammunition. It also states the soldier should be advised to consult with a legal assistance attorney for guidance on the lawful disposal or sale of those items.

NCIS

The NCIS IG and Legal Department personnel stated NCIS had no control over civilian agents privately owned firearms. Local law enforcement is made aware of convictions, and NCIS would allow them to determine if it is necessary to recover privately owned firearms. No advisement is given to any employee that they have a requirement to dispose of them lawfully, and employees would not be advised to seek legal counsel concerning firearm and ammunition ownership. Some NCIS units have active duty U.S. Marine Corps Criminal Investigations Division special agents assigned to them. These special agents would need to be informed of the requirement to dispose of their privately owned firearms and ammunition lawfully should they be found to have a qualifying conviction, in accordance with DoDI 6400.06.

Navy Administrative Message 234-04, "Implementation of the Domestic Violence Misdemeanor Amendment," October 20, 2004, states that command elements must advise those military members with qualifying convictions to dispose of their privately owned firearms and ammunition lawfully. Secretary of the Navy Instruction 5500.29C, "Use of Deadly Force and the Carrying of Firearms by Personnel of the Department of the Navy in Conjunction with Law Enforcement, Security Duties and Personal Protection," August 27, 2003, implements the provisions of the Lautenberg Amendment for all Navy and Marine Corps personnel in law enforcement and security positions, which would include civilians. NCIS Manual 1, Chapter 34, "Firearms, Use of Force, Intermediate Weapons, and Ammunition," March 2008, states NCIS special agents are authorized to arm with certain privately owned firearms, in place of Government issued firearms, for duty. However, there is no written policy for advising civilian special agents to dispose of

weapons lawfully. Not informing a civilian employee to dispose of their privately owned weapons when they carry the privately owned weapon in the course of their duties could lead to an NCIS special agent violating the Lautenberg Amendment by possessing a firearm authorized as an NCIS duty weapon.

AFOSI

AFOSI Instruction 36-2901, "Standards of Professional Conduct for AFOSI Personnel," September 10, 2008, requires commanders or supervisors to advise employees (military and civilian) to dispose of privately owned firearms and ammunition lawfully when they are found to have a qualifying conviction.

Conclusion

We determined NCIS did not comply with all of the requirements set forth in DoDI 6400.06 and Service policy. Not advising military members with qualifying convictions to dispose of privately owned firearms and ammunition lawfully and/or not advising them to seek legal assistance with the disposal of firearms and ammunition lawfully does not fulfill the requirements of DoDI 6400.06. Under these circumstances, a military member with a qualifying conviction might inadvertently commit a felony by not disposing of privately owned firearms and ammunition in accordance with the Lautenberg Amendment. A similar situation could develop due to the lack of guidance in DoDI 6400.06 with regard to civilian employees because there is no requirement for them to be advised in the same manner as military members. Although DoD's legal authority over civilian employees is somewhat limited, DoD policy and NCIS Manual 1, Chapter 34, require that commanders and supervisors advise those with qualifying convictions to dispose of privately owned firearms and ammunition. AFOSI has procedures in place to advise military members and civilian employees to dispose of privately owned firearms and ammunition in accordance with the law or to obtain legal counsel for advice on how to do so when they are found to have a qualifying conviction, in accordance with DoDI 6400.06.

Recommendations, Management Comments, and Our Response

Recommendation B.1

We recommend that the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy revise DoD Instruction 6400.06 to incorporate language requiring commanders and supervisors to advise all employees (military and civilian) found to have a qualifying conviction to dispose of their privately owned firearms and ammunitions in accordance with the law.

Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy Comments

The Deputy Assistant Secretary of Defense for Military Community and Family Policy agreed with our recommendations and stated that DoDI 6400.06 will be revised to include a requirement to advise civilians with qualifying convictions of their responsibility to dispose of privately owned firearms and ammunition.

Our Response

Comments from the Deputy Assistant Secretary of Defense for Military Community and Family Policy are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Recommendation B.2

We recommend that the Defense Criminal Investigative Service, U.S. Army Criminal Investigation Command, and Naval Criminal Investigative Service develop policies for commanders and supervisors to advise all employees (military and civilian) with qualifying convictions to dispose of privately owned firearms and ammunition to preclude an employee from inadvertently violating the law. This should be included in existing training and added to any internal checklists to ensure employees comply with the law.

Defense Criminal Investigative Service Comments

The Deputy Inspector General for Investigations, DoD Office of Inspector General, agreed and stated that on November 26, 2014, an interim policy change to the Special Agent Manual Chapter 38, "Use of Force," was issued. The change requires any special agent with a qualifying conviction to dispose of privately owned weapons and ammunition.

Our Response

Comments from the Deputy Inspector General for Investigations, DoD Office of Inspector General, are responsive, and the actions meet the intent of the recommendation. No further comments are required.

U.S. Army Criminal Investigation Command Comments

The Chief of Staff, U.S. Army Criminal Investigation Command, agreed and stated that USACIDC has initiated policy revisions to incorporate the recommendations.

Our Response

Comments from the Chief of Staff, U.S. Army Criminal Investigation Command, are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Naval Criminal Investigative Service Comments

The Deputy Director, Naval Criminal Investigative Service, agreed and stated that NCIS Manual 1, Chapter 34 would be updated. The update will require firearms training instructors to remind all employees (military and civilian) of their continuing obligation to report any qualifying conviction to their chain-of-command. Instructors will also advise all employees during firearms qualification training that if they obtain qualifying convictions, they must dispose of privately owned firearms and ammunition.

Our Response

Comments from the Deputy Director, Naval Criminal Investigative Service, are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Finding C

Employee Reporting of Domestic Violence Convictions

DCIS, USACIDC, and NCIS did not periodically inform employees in covered positions that they have an affirmative, continuing obligation to inform their commander or supervisor if they have, or later obtain, a qualifying conviction, in accordance with DoDI 6400.06.

Discussion

DCIS, USACIDC, and NCIS did not periodically inform employees of their continuing obligation to report domestic violence convictions for the duration of their employment. The agencies have informal, internal processes (not written in policy, but separate from what is required by DoDI 6400.06) for their personnel to report involvement with LEAs. Employees are also required to disclose convictions during the periodic security clearance investigation conducted by the Office of Personnel Management (OPM).⁸

DCIS, USACIDC, and NCIS stated that they believed OPM investigators would find and report qualifying convictions to the DCIOs during security clearance investigations. However, when OPM investigators discover criminal history information during a security clearance investigation, they inform the DoD Central Adjudicative Facility (CAF). The DoD CAF documents the criminal history data in the Joint Personnel Adjudication System (JPAS); however, it is the DCIO's responsibility to review the information. DCIS, USACIDC, and NCIS informed us they do not routinely review the security clearance information in JPAS and therefore may be unaware of criminal history data about their personnel.

DCIS

The DCIS SAM Chapter 38, April 2012, does not require periodic training on the Lautenberg Amendment requirements as implemented by DoDI 6400.06. However, as a result of a 2014 Department of Health and Human Services peer review, DCIS is revising SAM Chapter 38. The revision will require periodic training and annual recertification through the use of the DD Form 2760 during the last quarter of every fiscal year (prior to September 30).

⁸ All DCIOs require their special agents to maintain a Top Secret security clearance, which requires verification of eligibility to have access to classified information (periodic reinvestigation) every 5 years.

USACIDC

The USACIDC Special Agent Accreditation Division stated employees know that they have an ongoing responsibility to report all encounters with law enforcement for security clearance purposes. CIDR 195-1 states that CID Special Agents will report to their chain-of-command any time they are apprehended or arrested. DoDI 6400.06 and AR 600-20 require the reporting of domestic violence convictions using the DD Form 2760 but do not address other encounters with law enforcement. The Accreditation Division opined there would be no reason to complete a DD Form 2760 unless there was a qualifying conviction.

NCIS

The NCIS Inspector General provided a copy of the annual message that the Security Directorate sends to all NCIS employees by e-mail. The message notifies personnel of their ongoing responsibility to report all encounters with law enforcement for security clearance purposes. However, this message does not specifically address domestic violence convictions, the Lautenberg Amendment, or its requirements.

AFOSI

AFOSI annually trains and recertifies military members and civilian employees in covered positions on the Lautenberg Amendment requirements. In addition, AFOSI requires the DD Form 2760 be completed at the end of the training, in accordance with Air Force Instruction 31-117, "Arming and Use of Force by Air Force Personnel," June 29, 2012, paragraphs 2.3.2.2 and 2.3.2.2.2 and AFOSI Instruction 71-113, "Firearms, Use of Force, and Tactics," January 15, 2009, paragraph 1.13.2. AFOSI also requires the DD Form 2760 to be completed prior to receipt of permanent change of station orders and archived in the AFOSI training database. Employees who do not complete the training or fail to recertify through DD Form 2760 may have their authority to arm revoked, in writing.

Conclusion

DCIS, USACIDC, and NCIS procedures to ensure continued reporting of domestic violence convictions did not comply with DoDI 6400.16. Dependence on a security clearance investigation is unreliable because the process is focused on the risk a person represents when having access to sensitive and classified information. There are differing standards between a security clearance investigation and the suitability of a DCIO special agent to carry a firearm.

Anyone assigned to a Defense Criminal Investigative Organization, even temporarily (regardless of duration of assignment), who will handle firearms and ammunition must be included in the training and recertification process to meet the provisions of the Lautenberg Amendment as implemented by DoD policy.

DoDI 6400.06, paragraph 5.5.9.1., states that Secretaries of Military Departments shall periodically inform personnel of the Lautenberg Amendment. However, the guidance does not specify how often or identify specific documentation requirements beyond being retrievable (paragraph 5.5.9.2.). With the exception of the Air Force policies listed previously and the recently submitted DCIS SAM Chapter 38 revision, the DCIOs have not implemented these requirements.

The Instruction needs to be revised to require all employees serving in covered positions to complete the DD Form 2760 annually. This annual recertification serves the purpose of reminding all personnel in covered positions of their affirmative, continuing obligation to inform commanders and supervisors if they have or obtain a qualifying conviction. It will also reduce the likelihood that an individual with a qualifying conviction will gain access to firearms and ammunition.

Recommendations, Management Comments, and Our Response

Recommendation C.1

We recommend that the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy revise DoD Instruction 6400.06 to require all employees (military and civilian) serving in a covered position to complete the DD Form 2760 annually, at a minimum.

Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy Comments

The Deputy Assistant Secretary of Defense for Military Community and Family Policy agreed and stated that DoDI 6400.06 would be revised to require the completion of the DD Form 2760 annually, at a minimum.

Our Response

Comments from The Deputy Assistant Secretary of Defense for Military Community and Family Policy are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Recommendation C.2

We recommend that Defense Criminal Investigative Service, U.S. Army Criminal Investigation Command, and Naval Criminal Investigative Service revise their policies to require the completion of the DD Form 2760 at the end of the annual training required by DoD Directive 5210.56.

Defense Criminal Investigative Service Comments

The Deputy Inspector General for Investigations, DoD Office of Inspector General, agreed and stated that on October 27, 2014, a revised Special Agent Manual Chapter 38, "Use of Force," was published. The revision requires all agents to complete the DD Form 2760 during the last quarter of the fiscal year and requires the DD Form 2760 to be permanently retained with their firearms training record.

Our Response

Comments from the Deputy Inspector General for Investigations, DoD Office of Inspector General, are responsive, and the actions meet the intent of the recommendation. No further comments are required.

U.S. Army Criminal Investigation Command Comments

The Chief of Staff, U.S. Army Criminal Investigation Command, agreed and stated that policy revisions were initiated.

Our Response

Comments from the Chief of Staff, U.S. Army Criminal Investigations Command, are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Naval Criminal Investigative Service Comments

The Deputy Director, Naval Criminal Investigative Service, concurred with our recommendations. They stated that all NCIS personnel that carry firearms will be required to complete a DD Form 2760 annually, in accordance with a General Administrative Message to be disseminated by the NCIS Inspector General. All personnel in covered positions who obtain a qualifying conviction will be required to complete a DD Form 2760 immediately and return it to the Human Resources Department and the NCIS Inspector General.

Our Response

Comments from the Deputy Director, Naval Criminal Investigative Service, are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Finding D

Sharing Information about Domestic Violence Convictions

DoDI 6400.06 paragraph 6.1.5 requires a memorandum of understanding (MOU) between DoD and civilian Law Enforcement Agencies (LEA) for the purposes of sharing information about domestic violence incidents involving DoD employees. Although USACIDC, NCIS, and AFOSI have not established MOUs in accordance with DoDI 6400.06, it is a redundant requirement because DoDI 6400.06 also requires an MOU between base legal officials and civilian prosecuting attorneys.

Discussion

The MCIOs routinely establish MOUs with other LEAs.⁹ DoDI 6400.06 requires an MOU with local law enforcement that includes sharing information about cases involving civilian alleged offenders when military personnel or family members are the victim of domestic violence, or when military personnel are the alleged offenders. It includes a template that recommends responding officers take additional steps during the initial response to a domestic violence incident and during the course of the investigation to ascertain whether the alleged offender is a military member. Specifically, DoDI 6400.06 states, in part, as follows:

When responding to or investigating domestic abuse cases, the (CITY, COUNTY, or STATE) Law Enforcement Agency will ascertain whether the alleged offender is an active duty Service member. If the alleged offender is an active duty Service member, and subject to (2) below, the responding officer(s) will note on the top of the incident/ investigation report "Copy to the (INSTALLATION) Installation Law Enforcement" and the designated Records personnel will ensure the copy is forwarded.

However, the administration of the number of MOUs required would overburden the small units charged with solving crime and protecting DoD interests and would place that same administrative burden on local LEAs. Further, this requirement is redundant because DoDI 6400.06 paragraph 6.1.5 requires installation officials, including base legal officials, to establish written procedures for improving information sharing on domestic abuse investigations, arrests, and prosecutions when military personnel are involved.

⁹ The Defense Criminal Investigative Service does not have an installation law enforcement mission and so there is no requirement for them to have an MOU with local law enforcement.

Additionally, the requirements of DoDI 6400.06 would place an operational burden on local law enforcement officers who respond to the scenes of domestic violence incidents. During that initial response, local law enforcement officers would have to determine the military affiliation of everyone involved in the incident and which MCIO to contact with the appropriate data. This would increase the risk to law enforcement officers by distracting them from the critical duties of ensuring the safety of victims during these incidents. This is especially important because according to the FBI's 2010 "Statistics on Law Enforcement Officers Killed and Assaulted," domestic disturbances accounted for the largest percentage of injuries to officers.

Conclusion

We determined that the MCIOs did not comply with DoDI 6400.06 regarding the use of MOUs in domestic violence cases. Because DoDI 6400.06 already requires installation officials to establish written procedures for improving information sharing when military personnel are involved in domestic abuse investigations, arrests, and prosecutions, the MOUs accomplished by the MCIOs would be redundant.

Recommendation, Management Comments, and Our Response

Recommendation D

We recommend Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy revise DoD Instruction 6400.06 by removing the requirement for a separate memorandum of understanding executed between civilian law enforcement and the Military Criminal Investigative Organizations.

Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy Comments

The Deputy Assistant Secretary of Defense for Military Community and Family Policy partially concurred with our recommendation. Their office believed the memorandum of understanding to be a valid requirement, but felt the responsibility for it should shift to the Chief of Law Enforcement. DODI 6400.06 will be revised to omit the Military Criminal Investigative Organizations from the requirement.

Our Response

Comments from the Deputy Assistant Secretary of Defense for Military Community and Family Policy are responsive, and the actions meet the intent of the recommendation. No further comments are required.

Air Force Office of Special Investigation Comments

Although not required to comment, the Director of Strategic Programs and Requirements for the Air Force Office of Special Investigations agreed with our recommendation. The Director explained that it would be difficult for an MCIO to compel local law enforcement agencies to take on the responsibilities associated with the memorandum of understanding required by DoDI 6400.06. He added that, because of the global mission of today's MCIOs, attempting to establish agreements worldwide would be impractical, burdensome, and would not guarantee compliance with the requirement.

Appendix

Scope and Methodology

We conducted this evaluation from March 2014 to October 2014 in accordance with the Council of Inspectors General on Integrity and Efficiency, “Quality Standards for Inspections and Evaluations,” January 2012. Based on the assessment objectives, we planned and performed the evaluation to obtain sufficient information to provide a reasonable basis for our observations and conclusions, using our assessment objectives.

Our independent evaluation included a review of each DCIO’s policies and procedures for compliance with the Lautenberg Amendment for those personnel who carry firearms in the performance of their duties. We reviewed the procedures used for identifying, tracking, and accounting for personnel in covered positions who received a qualifying conviction prior to entrance on duty or one discovered during the life cycle of employment.

We analyzed the DCIOs’ compliance with notification requirements for informing employees and applicants for a covered position about the provisions of the Lautenberg Amendment at all facilities where firearms or ammunition were stored, issued, disposed of, or transported to. We collected and analyzed the data call response provided by each DCIO. As a result of the review and analysis of the data call information, we interviewed DCIO management officials and key staff to determine the DCIOs’ level of compliance with the provisions of the Lautenberg Amendment and to obtain additional information.

Use of Computer-Processed Data

We did not use computer-processed data to perform this evaluation.

Prior Coverage

No prior coverage has been conducted on the Lautenberg Amendment during the last 5 years.

Management Comments

Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JAN 13 2015

MEMORANDUM FOR INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Military Community and Family Policy Coordination on DoDIG Draft Report, Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance (Project No. 2013C030)

In response to the December 31, 2014 request from Mr. Randolph R. Stone, Deputy Inspector General for Policy and Oversight, for comments on an update to the DoD Inspector General Report 2013C030, the following comments are provided from the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy (MC&FP).

- **Recommendation A.** We recommend that Commander, U.S. Army Criminal Investigation Command revise Army Regulation 195-3 and Criminal Investigations Command Regulation 195-1 to require U.S. Army Criminal Investigation Command applicants to certify that they do not have a qualifying conviction using the DD Form 2760 during the application process. Doing so would ensure compliance with the certification requirement in DoD Directive 5210.56 and DOD Instruction 6400.06.

MC&FP Response: Concur. All military department criminal investigative commands should require completion of DD Form 2760 as a pre-employment requirement for anyone who would carry a firearm related to a covered position. MC&FP will be reviewing DoDI 6400.06 for a full rewrite and in coordination with the Department MCIO components will revise language to be more directive in this requirement to better align with DoDD 5201.56.

- **Recommendation B.1.** We recommend that the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy revise DoD Instruction 6400.06 to incorporate language requiring commanders and supervisors to advise all employees (military and civilian) found to have a qualifying conviction to dispose of their privately owned firearms and ammunitions in accordance with the law.

MC&FP Response: Concur. In coordination with military investigative components and Civilian Personnel Office (CPO), MC&FP will revise language in DoDI 6400.06 to include an advisement requirement that addresses both military and civilian agents.

- **Recommendation C.1.** We recommend that the Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy revise DoD Instruction 6400.06 to require all employees (military and civilian) serving in a covered position to complete the DD Form 2760 annually, at a minimum.

MC&FP Response: Concur. As stated above, MC&FP will work with Military investigative components and CPO to draft and incorporate additional language in DoDI

Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy (cont'd)

6400.06 requiring all employees (military and civilian) serving in a covered position to complete DD Form 2760 annually, at a minimum. Standardizing this requirement for military and civilian agents will reduce the likelihood that agents with a qualifying conviction will gain or maintain access to firearms and ammunition.

- **Recommendation D.** We recommend Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy revise DoD Instruction 6400.06 by removing the requirement for a separate memorandum of understanding executed between civilian law enforcement and the Military Criminal Investigative Organizations.

MC&FP Response: Partially concur. With over 70% of our active military members and their families living in areas under civilian law enforcement jurisdiction, having mechanisms, such as memorandum of understanding (MOU), in place to ensure timely coordination and collaboration is essential to the DoD Coordinated Community Response to domestic violence. In that domestic violence response is typically performed by installation law enforcement under the authority of a Provost Marshall, Director of Security Forces or Navy Master at Arms, it would be these installation entities who would establish an MOU and be responsible for sharing relevant information with the appropriate local civilian law enforcement jurisdiction, and then subsequently with the MCIO, thereby eliminating the need for MCIOs to establish separate MOUs. The roles and responsibilities of (military and civilian) law enforcement officers and criminal investigators are each uniquely different and critical to DoD's prevention and Coordinated Community Response (CCR) to domestic violence. Distinct agreements are needed for the most effective coordination between civilian and military law enforcement and criminal investigation officials.

Continued MOAs between civilian and military law enforcement are critical components of the military's ability to have awareness of issues in military families and for holding service members accountable. Collaboration between Military and civilian law enforcement provide the most immediate knowledge of and response to incidents, therefore the requirement for a MOU is critical.

MC&FP will revise the DoDI 6400.06 to state that the Chief of Law Enforcement will ensure that the Military Criminal Investigators are provided information gained from the local law enforcement response and delete the MCIO from the language.

We appreciate the opportunity to respond to this draft report. These comments have also been discussed and agreed upon with Mr John Awtrey, Director, Law Enforcement Policy and Support, (571) 372-1989. Please direct questions to Kathy Robertson, FAP Manager, (571) 372-5350 or Katherine.e.robertson8.civ@mail.mil.



Rosemary Freitas Williams
Deputy Assistant Secretary of Defense
(Military Community and Family Policy)

Defense Criminal Investigative Service



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

December 10, 2014

MEMORANDUM FOR RANDOLPH R. STONE, DEPUTY INSPECTOR GENERAL FOR
POLICY AND OVERSIGHT

SUBJECT: Evaluation of DCIS' Compliance with the Lautenberg Amendment

- This memorandum is in response to your Evaluation of the DCIO's Compliance with the Lautenberg Amendment, Project No. 2013C030, dated November 26, 2014. Our responses to the recommendations in the draft report related to DCIS are discussed below.
- **Recommendation B.2 (paraphrased):** DCIS should develop policies for supervisors to advise all employees with qualifying convictions to dispose of privately owned firearms and ammunition to preclude an employee from inadvertently violating the law. This should be included in existing training and added to any internal checklists to ensure employees comply with the law.
 - DCIS response: Concur. On November 26, 2014, an interim policy change to DCIS Special Agents Manual Chapter 38, "Use of Force," was published. The new policy adds the following language to DCIS' existing *Lautenberg*-related policy:
"Additionally, any special agent affected by this act must also dispose of any personally owned weapons and ammunition."

Furthermore, all DCIS Special Agents attend the DCIS Special Agent Refresher Training Program (SARTP) on a recurring basis during which substantive time is devoted to the review of DCIS Use of Force policy. Also, on an annual basis, DCIS agents are required to complete and sign DD Form 2760, which mandates for those who have received a domestic violence conviction that they "take steps to relinquish possession of any privately owned firearms or ammunition." See below.
- **Recommendation C.2 (paraphrased):** DCIS should revise their policies to require the completion of the DD Form 2760 at the end of the annual training required by DoD Directive 5210.56.
 - DCIS response: Concur. On October 27, 2014, a revised DCIS Special Agents Manual Chapter 38, "Use of Force," was published. DCIS SAM Chapter 38.16.b (6) was revised to include the following language: *"During the last quarter of each fiscal year, not later than September 30, all special agents will complete the DD Form 2760, "Qualification to Possess Firearms or Ammunition" (See Attachment L). The DD Form 2760 will be permanently retained with the special agent's Form 52."*

#OIM 016 333-14

Defense Criminal Investigative Service (cont'd)

Should you have any questions please contact Ross Weiland, Assistant Inspector General for Investigations, Internal Operations, at (703) 604-8603.



James B. Burch
Deputy Inspector General
for Investigations

U.S. Army Criminal Investigation Command



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CRIMINAL INVESTIGATION COMMAND
27130 TELEGRAPH ROAD
QUANTICO, VA 22134-2253

CISP-AC

31 December 2014

MEMORANDUM FOR Department of Defense Office of the Inspector General (DODIG), Investigative Policy and Oversight, Suite 11J27, 4800 Mark Center Drive, Alexandria, VA 22350

SUBJECT: Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements (Project No. 2013C030)

1. The following is provided in response to the subject DODIG draft report findings and recommendations of 2 December 2014.
2. The United States Army Criminal Investigation Command concurs with the findings and recommendations of the subject report. Policy revisions to incorporate the additional recommendations have been initiated.
3. The point of contact is Mrs. Marianne Godin at 571-305-4104 or email marianne.k.godin.civ@mail.mil.


DANIEL M. QUINN
Chief of Staff

Naval Criminal Investigative Service



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
27130 TELEGRAPH ROAD
QUANTICO VA 22134-2253
INFO MEMO

January 13, 2015

FOR: DEPARTMENT OF DEFENSE, OFFICE OF INSPECTOR GENERAL

FROM: Mark D. Ridley, Deputy Director *Mark D. Ridley*

SUBJECT: (U) NCIS Response to DoDIG Lautenberg Compliance Report

- (U) The Naval Criminal Investigative Service (NCIS) concurs with the findings and recommendations contained in the Department of Defense Office of Inspector General's (DoDIG's) evaluation of the Defense Criminal Investigative Organizations' (DCIOs') compliance with the requirements in the Lautenberg Amendment. DoDIG assessed whether the DCIOs have adequate procedures and processes to ensure a qualifying domestic violence offense can be identified by the DCIOs. As a result of DoDIG's review of the NCIS' Lautenberg compliance DoDIG recommended:
- (U) Recommendation B.2: NCIS develop policies for commanders and supervisors to advise all employees (military and civilian) with qualifying convictions to dispose of privately owned firearms and ammunition to preclude an employee from inadvertently violating the law. This should be included in existing training and added to any internal checklists to ensure employees comply with the law.

- [REDACTED]
- [REDACTED]

Naval Criminal Investigative Service (cont'd)

- [REDACTED]
- (U) Recommendation C.2: Revise NCIS policy to require the completion of the DD Form 2760 at the end of the annual training required by DoD Directive 5210.56.

- [REDACTED]
- [REDACTED]

DISTRIBUTION: NAVIG

Point of Contact: Dwight Clayton, Inspector General of Naval Criminal Investigative Service, (571) 305-9036

Air Force Office of Special Investigations



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS
QUANTICO VIRGINIA

16 Dec 14

MEMORANDUM for IG, DoD, ATTN: DIG, Policy and Oversight

FROM: HQ AFOSI/XR
27130 Telegraph Road
Quantico, VA 22130

SUBJECT: AFOSI Response to DoDOIG Project No. 2013V030, "Evaluation of the Defense Criminal Investigative Organizations' Compliance with the Lautenberg Amendment Requirements and Implementing Guidance," December 2, 2014

1. AFOSI has reviewed the draft report and appreciates the hard work the Department of Defense Inspector General Criminal Investigative Policy and Oversight Office put into this project. Thank you for the opportunity to provide comments and the following are submitted for consideration:

a. With respect to your FINDING D Discussion, we recommend adding that a DCIO/MCIO has no ability to compel local law enforcement agencies worldwide to take on the responsibility to verify military status for domestic violence cases. Furthermore, even if each individual DCIO/MCIO established MOU's with all law enforcement entities we would have no way of monitoring compliance and no redress for noncompliance. DoD can impose requirements on DoD personnel but not on local law enforcement and this requirement is labor intensive and unnecessary.

b. Additionally, military and civilian employees go on leave, are sent on temporary duty and travel in areas oftentimes away from a military installation. The reality of establishing agreements with every local and state law enforcement agency across the globe would be impractical, burdensome and would still not guarantee full compliance or coverage thus we agree with your recommendation on deleting this requirement.

2. Again, we appreciate your efforts and the opportunity to respond to the draft report. The AFOSI POC for this matter is SA Lee Porter, Chief, Agency Policy Branch, lee.porter@us.af.mil, DSN 240-8812.


J. KEVIN POORMAN, GS-15, DAF
Director, Strategic Programs and Requirements

"Eyes of the Eagle"

Acronyms and Abbreviations

AFOSI	Air Force Office of Special Investigations
AR	Army Regulation
CAF	Consolidated Adjudication Facility
CID	Criminal Investigation Division
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
DoDD	DoD Directive
DoDI	DoD Instruction
FBI	Federal Bureau of Investigation
IG	Inspector General
JPAS	Joint Personnel Adjudication System
LEA	Law Enforcement Agency
MCIO	Military Criminal Investigative Organization
MOU	Memorandum of Understanding
NCIS	Naval Criminal Investigative Service
ODASD (MC&FP)	Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy)
OPM	Office of Personnel Management
SAM	Special Agent Manual
U.S.C.	United States Code
USACIDC	U.S. Army Criminal Investigation Command

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U.S. DEPARTMENT OF DEFENSE

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For more information about DoD IG reports or activities, please contact us:

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